

The Honorable Brian D. Lynch
Chapter 7
Hearing Date: August 26, 2017
Hearing Time: 9:00 AM
Hearing Location: Tacoma Federal Courthouse/
Union Station
Response Due: August 19, 2017

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

IN RE:

MICHAEL GRAY AND NICOLE LEE HART,
Debtors.

MICHAEL GRAY AND NICOLE LEE HART,
Plaintiffs,

v.

ZB, N.A. D/B/A ZIONS FIRST NATIONAL
BANK, AND BAILEY & BUSEY, PLLC
Defendants.

BK Case No. 16-41279- BDL

Chapter: 7

Adv, Pro. 16-04123

DECLARATION OF MICHAEL GRAY
IN SUPPORT OF MOTION FOR
PARTIAL SUMMARY JUDGMENT

I, Michael Gray, hereby declare as follows:

1. I am a Plaintiff in the above-referenced adversary proceeding and I have personal knowledge concerning all information in this declaration.

2. My wife Nicole Hart and I have two sons, then-aged six and seventeen, and we live in Kelso, Washington.

DECLARATION OF MICHAEL GRAY IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT - 1

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1 3. We fell behind on truck payments to Zions First National Bank ("ZB"), and they
2 repossessed our 2002 Dodge Dakota on August 31, 2010, and sold it at auction on September 21,
3 2010, for \$3,500.

4 4. Thereafter, ZB sued us for the deficiency balance and obtained a default judgment
5 against us in the Superior Court of Cowlitz County, Washington (hereafter "the collection
6 lawsuit") on June 22, 2012.

7 5. At that time, I was unemployed and subsisting on disability benefits. With only
8 my wife working a full-time job, the prospect of her wages being garnished was devastating.
9

10 6. My wife and I wanted to avoid garnishment, so we tried repeatedly to negotiate a
11 settlement arrangement to stop the accumulating interest of 18.99% and pay off the debt.

12 7. At one point, I offered to borrow money from Nicole's 401(k) retirement account
13 for a possible settlement offer of \$3,650.00 including the garnishments already taken.

14 8. Unfortunately, ZB refused the settlement and proceeded to garnish 25 percent of
15 my wife's take-home pay beginning in July 2012 and continuing through the end of 2013 when
16 we were finally able to enter a payment arrangement with ZB to end the garnishments with a
17 monthly payment of \$100 to ZB beginning in January 2014.
18

19 9. The payments later increased to \$150 in August 2014 after ZB demanded higher
20 payments.

21 10. After paying regularly for over a year and thus avoiding garnishment, I finally
22 realized after conversations with ZB that the interest rate and fees remained so high that only
23 \$57.00 a month was going to reduce the outstanding principal on the debt.
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27 DECLARATION OF MICHAEL GRAY IN SUPPORT OF
 MOTION FOR PARTIAL SUMMARY JUDGMENT - 2

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1 11. At that point I was frustrated with the entire situation and I notified ZB that we
2 were preparing to file for bankruptcy and I provided ZB with the name of our bankruptcy
3 attorney, Kevin Vibbert.

4 12. Soon after, I notified ZB that we were preparing to file bankruptcy. My wife and I
5 received motion pleadings for supplemental proceedings, but I was never personally served with
6 the documents.

7 13. On March 25, 2016, my wife and I filed for bankruptcy and listed Zions Bank as
8 one of our creditors.
9

10 14. On May 24, 2016, after 7:00 p.m, four deputies of the Cowlitz County Sheriff's
11 Department arrived at our home in multiple marked vehicles.

12 15. I was at home with my six-year-old special needs child when two armed deputies
13 came to our door to arrest me and my wife.

14 16. When I answered the door, the deputies pulled me from the house, handcuffed me
15 on in the front lawn in view of my neighbors, and dragged me to the back seat of a squad car.
16

17 17. I was wearing only a pair of boxer briefs at the time and my wife was away.

18 18. For over an hour, I sat in the police car as the deputies waited for my wife to
19 come home so that they could arrest her too.

20 19. During this time, my six-year-old was running in and out of the house
21 unsupervised. He did not know why they had taken me away and he was crying out of confusion
22 and fear.

23 20. When my wife finally arrived, they arrested her too, and told us that Child
24 Protective Services would have to be called if we could not find anyone to watch our young son.
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1 21. Eventually, our older son came home and could watch him, but since he was also
2 a minor, he couldn't help us with bail or anything else.

3 22. At that time, neither one of us had any idea why we were being arrested.

4 23. With nothing useful to tell either of our sons, we were taken to the Cowlitz
5 County jail in Longview and detained.

6 24. I was strip-searched and put into a holding cell at the jail while my wife called
7 friends and family for help with bail.

8 25. Eventually my wife reached her father who made bail arrangements around 11:00
9 pm, but it was too late for the jail to release us that night. We were issued prison clothing and left
10 to spend the night in holding cells alongside other detainees

11 26. It was not until our arraignment hearing at 11:00 am the next morning that we
12 finally learned that the repossession judgment from ZB led to our arrest, even though we had
13 filed a bankruptcy.
14

15 27. At this point, we called our bankruptcy attorney who appeared with us at the
16 arraignment to obtain a continuance due to the bankruptcy filing. He also immediately contacted
17 ZB's attorneys, Bailey & Busey, about the arrest
18

19 28. Shortly thereafter, ZB quashed the bench warrant and we did not have to appear at
20 the continued arraignment date.

21 29. I could not believe the entire situation. I was just sitting at home with my son
22 when a creditor for my repossessed car arrested me out of the blue for a deficiency on a car debt.
23 I tried to put it out of my mind but I just couldn't.
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27 DECLARATION OF MICHAEL GRAY IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT - 4

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1 30. My family has been turned upside down by these events. My neighbors look at us
2 like we are common criminals, and even if I tried to explain they would never fully understand or
3 appreciate that we were wrongfully arrested for a deficiency on a repossessed car.

4 31. After several months of emotional trauma, stress, and worry, my wife and I
5 sought help from legal counsel.

6 32. We also thought a lawyer could help us expunge the arrest records from public
7 records, credit reporting agencies, and entities that perform employment background checks, as
8 well as the fallout from other improper reporting in the era of social media.

9 33. I also plan to apply to Lewis & Clark Law School in the future and I worry that
10 this incident will potentially affect my future admission to the state bar association.

11 34. Lastly, the effect on my wife and son have been severe. My wife is still severely
12 traumatized and it has affected our marriage. She still relives the experience regularly and I feel
13 helpless to do anything to relieve her pain and sorrow.

14 35. As for my son, we have always tried to instill respect for law enforcement in our
15 children and teach them that police officers are their friends when they are in trouble. However,
16 since this experience, he has developed an acute fear of the police and of men in uniform and it
17 has been difficult for us to engage him in conversation with him about it. We fear the incident
18 will have lasting effects.

19 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
20 WASHINGTON THAT THE ABOVE IS TRUE AND CORRECT.

21 DATED this March 27, 2017

22 /s/ Michael Gray
23 Michael Gray

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27 DECLARATION OF MICHAEL GRAY IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT - 5

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